STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

BOBBY GILLEYLEN,

Plaintiff,

vs. Case No. 2006-0002-CK

FARM BUREAU INSURANCE CO. and
AGENT R. KEITH GRAHAM,

Defendants.

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OPINION AND ORDER

Defendants have filed a motion for summary disposition and for sanctions and costs. Plaintiff has filed a response and a motion for summary disposition under 2.116(B)(1).

Plaintiff, in pro per, filed this complaint on January 3, 2006, and filed an amended complaint on February 2, 2006. Essentially, plaintiff alleges that, on August 26, 2000, he walked across the street from his residence to visit his cousin, Joseph Jenkins, who resided at 176 ½ North Walnut Street in the City of Mt. Clemens. He alleges that an individual he knows as "D.J.," the son of one "Debra Brownlee," was standing near the entrance of his cousin's residence. D.J. allegedly asked plaintiff to "give him a woman," and plaintiff responded that he "did not have one." Plaintiff claims that later, as he left his cousin's residence to return home, D.J. began hitting him in the face. Plaintiff claims that D.J. and another man then held him down and "stomp[ed]" on his arms and legs. Following these events, plaintiff claims that he was taken by ambulance to St. Joseph Hospital, where he was allegedly treated for a broken foot and leg.

Plaintiff alleges that individuals identified as Mr. and Mrs. Harrington were the owners of 176 ½ North Walnut at the time of this incident, and that Defendant Farm Bureau Insurance Company was their homeowner's insurance provider on the date of the incident. Plaintiff claims that he contacted Farm Bureau Insurance Company, seeking compensation for his injuries. Plaintiff alleges that Defendant R. Keith Graham, a claims agent, asked whether he would accept $500,000.00 in compensation for his injuries. Plaintiff maintains that he responded affirmatively, at which point Defendant Graham allegedly stated "that he would get back in touch with [plaintiff]." Plaintiff alleges that he received a letter on January 12, 2001, from Defendant Graham, indicating that he had completed his investigation of the matter and had determined that there was no negligence attributable to the insured homeowners, and declining to make any voluntary settlement offer.

Plaintiff commenced the present action seeking compensation for the injuries to his foot and leg. Plaintiff seeks damages for pain and suffering and emotional distress, as well as punitive damages. Plaintiff's complaint does not enumerate specific counts against the defendants. However, plaintiff does mention various legal concepts pursuant to which he apparently seeks recovery. Having carefully reviewed plaintiff's complaint, the Court discerns that plaintiff is bringing claims in the general areas of (1) breach of contract, (2) negligence, misrepresentation, fraud and lack of good faith for failing to explain benefits or provide coverage to plaintiff, and (3) negligence or nuisance for failing to inspect or maintain the premises of the insured.

Defendants now bring this motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v*

Everett, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of the plaintiff's claim. *Outdoor Advertising v Korth*, 238 Mich App 664, 667; 607 NW2d 729 (1999). The Court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted to determine whether a genuine issue of material fact exists to warrant a trial. *Id.* The Court must resolve all reasonable inferences in the nonmoving party's favor. *Id.*

In support of their motion for summary disposition, defendants argue that plaintiff's breach of contract claim must fail since they never entered into a contract to settle plaintiff's claim. Defendants next argue that, as a homeowner's insurance provider and claims agent for non-parties, they do not owe plaintiff—an adverse claimant—any duty. Defendants also claim that plaintiff's suggestion that they owed a duty to safely maintain the premises of their insured is spurious. Further, defendants argue that plaintiff's claims are barred by the applicable statutes of limitations. Finally, defendants assert that *res judicata* and collateral estoppel bar plaintiff's claims.

In response, plaintiff notes that his prior claims never went to trial and he was never awarded any money judgment. As such, he apparently believes that he should be permitted to maintain the present action. He raises the issues of joinder and severance, but it is unclear what relevance plaintiff believes these issues possibly have to the case at bar. Plaintiff also reiterates

the factual allegations contained in his complaint and suggests several times that defendants' actions constitute negligence per se. Lastly, plaintiff includes the text of MCL 450.4905 in his response.[1]

The Court shall first address plaintiff's allegations concerning breach of contract. Plaintiff apparently avers that he had entered into a contract with defendants to settle his claim for $500,000.00. The alleged contract is based on plaintiff's contention that R. Keith Graham asked him whether he would accept $500,000.00 in compensation for his injury. It is well established that "[m]ere discussions and negotiations cannot be a substitute for the formal requirements of a contract." *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991) (citation omitted). Rather, "[i]n order to form a valid contract, there must be a meeting of the minds on all the material facts." *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992).

Defendant Graham's alleged inquiry as to whether plaintiff would accept $500,000.00 in settlement of his claims, and plaintiff's affirmative response, clearly do not constitute the offer and acceptance needed to form a contract. There was no meeting of the minds under the circumstances alleged by plaintiff. To the contrary, Defendant Graham's alleged inquiry would better be characterized as a preliminary discussion or negotiation. As such, defendants are entitled to summary disposition of plaintiff's breach of contract claim pursuant to MCR 2.116(C)(8).

Next, the Court turns to plaintiff's allegations pertaining to negligence, misrepresentation, fraud, and lack of good faith in failing to provide plaintiff with an insurance settlement. Generally speaking, an insurer's duty is to the insured, rather than to an adverse

[1] Plaintiff cites this statute in his complaint as well. However, this statute has no relevance to the case at bar. MCL

claimant. *Frankenmuth Mut Ins Co v Keely*, 433 Mich 525, 555-556; 447 NW2d 691 (1989) (citation omitted). In the case at bar, plaintiff has failed to allege any facts which would establish that defendants owed him a duty. Since defendants did not owe plaintiff any duty of care, the Court is satisfied that defendants were not required to explain benefits or provide coverage to plaintiff. Defendants cannot be held liable for negligence, misrepresentation, fraud or lack of good faith for allegedly failing to do things that they had no obligation to do in the first place. Therefore, defendants are entitled to summary disposition of these claims pursuant to MCR 2.116(C)(8).

The Court shall now address plaintiff's claim that defendants had a duty to maintain or inspect the premises of the insured. To be liable on a premises liability theory in Michigan, plaintiff must show that defendant was a possessor of the premises at the time of plaintiff's injury. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 702; 644 NW2d 779 (2002). At most, defendants acted as the insurer and claims agent for 176 ½ North Walnut. They clearly cannot be held liable for plaintiff's alleged injuries on the basis of premises liability. Plaintiff misconstrues the applicable law, and once again fails to recognize that the insurer's duty is to its insured. In other words, an insurer has a duty to defend and indemnify its insured according to the terms of the insurance policy. However, an insurer is not directly liable to adverse claimants for failure to maintain or inspect premises owned by its policyholders. Thus, summary disposition of plaintiff's claim that defendants were somehow negligent in failing to maintain or inspect the premises of the insured must be granted pursuant to MCR 2.116(C)(8).

Having determined that summary disposition of plaintiff's claims is appropriate pursuant to MCR 2.116(C)(8), the Court need not address defendants' remaining arguments in support of

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450.4905 concerns the personal liability of members of a professional limited liability company.

their motion for summary disposition. Further, having granted defendants' motion for summary disposition under MCR 2.116(C)(8), plaintiff's motion for summary disposition under 2.116(B)(1) must be denied.

Finally, the Court turns to defendants' request for sanctions and costs pursuant to MCR 2.114(E) and (F), for filing a frivolous claim. Whether a claim or defense is frivolous depends on the facts of each case, *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002), and must be determined on the basis of the circumstances existing at the time the claim was asserted. *In re Costs and Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002). A plaintiff's inability to defeat a motion for summary disposition or to prove his claims at trial does not itself merit a finding that his claims were frivolous. See *Jerico Construction, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). Moreover, not every error in legal analysis constitutes a frivolous position warranting the imposition of sanctions. *Kitchen, supra,* at 663. A trial court's determination whether a claim or defense is frivolous is reviewed for clear error. *Id.* at 661.

In the case at bar, the Court finds that plaintiff's claims are frivolous. The Court notes that plaintiff previously brought separate lawsuits against the alleged owners of 176 ½ North Walnut, and these claims were dismissed by this Court with prejudice.[2] The dismissal of plaintiff's claims against the alleged owners of 176 ½ North Walnut should have alerted plaintiff to the fact that claims against the alleged owners' insurer and claims agent would also lack merit. Although errors in legal analysis and an inability to survive a motion for summary disposition do not necessarily warrant the imposition of sanctions and costs, plaintiff's position was utterly devoid of legal merit. Plaintiff's claims have been dismissed pursuant to MCR 2.116(C)(8)

[2] Case Nos. 2001-0658-NO and 2002-2124-CK.

because plaintiff has failed to allege any legally cognizable claims. Frankly, plaintiff's continuing attempts to gain monetary compensation from parties having the most minimal connection to the alleged underlying incident are vexatious. As such, the Court is satisfied that sanctions and costs are appropriate in this matter.

The Court's determination of the amount of sanctions is reviewed for abuse of discretion, and will only be overturned if the sanctions are so palpably and grossly violative of fact and logic that they evidence a perversity of will, a defiance of judgment, or the exercise of passion or bias. See *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). In the present matter, plaintiff is indigent and cannot reasonably be expected to pay more than a minimal sanction. Therefore, the Court is satisfied that plaintiff should pay a sanction of $500.00 for filing his frivolous claims.

For the reasons set forth above, defendants' motion for summary disposition is GRANTED and plaintiff's complaint is DISMISSED. Plaintiff's motion for summary disposition under 2.116(B)(1) is DENIED. Plaintiff is ORDERED to pay defendants sanctions of $500.00. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and closes this case.

IT IS SO ORDERED.

RICHARD L. CARETTI
Circuit Court Judge

Dated: July 3, 2006

cc: Bobby Gilleylen, In Pro Per
Gary W. Caravas, Esq.